

REMARKS

Claims 1-20 are pending in the application. In the non-final Office Action mailed January 27, 2005 ("Office Action"), claims 1, 3-5 and 7-20 were rejected. Claims 2 and 6 were objected to. Claims 1-5 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Saito et al.* (U.S. Patent No. 6,578,064, hereinafter *Saito*). Claims 9-13 and 15-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Saito* in view of *Parks et al.* (U.S. Patent No. 6,598,174, hereinafter *Parks*). Claims 6-8 and 14 are objected to as being dependent upon a rejected base claim, but are indicated as allowable if rewritten in independent form.

Claim 20 has been amended to correct a typographic error. Claims 1, 9, and 16 have been amended to recite additional limitations supported by the specification. No new matter has been added. Claims 2 and 13-14 have been cancelled without prejudice. Applicant expressly reserves the right to prosecute these claims in a later application.

Claim Rejections under 35 U.S.C. § 102(b)

Claims 1-5 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Saito*.

To anticipate a claim under 35 U.S.C. § 102, a reference must teach every element of the claim. *See* M.P.E.P. § 2131.

Claim 1 has been amended to recite additional limitations from cancelled claim 2. Specifically, claim 1 recites "determining a service demand placed upon each of the service components arising from performance of said plurality of operations" and "estimating a utilization rate for each of the service components based on said determined service demands, wherein said dynamically modifying includes adjusting said assigned initial priority rankings to substantially equalize said utilization rates of the service components". *Saito* does not teach at least these limitations. Instead, *Saito* teaches "computer selection means for determining a computer suitable for executing a program in consideration of at least one of the performance and the load of each computer as well as a set of a time limit and a processing amount of processing executed by the program." *See* col. 4, lines 61-65. *Saito* also teaches "means for predicting a processing time required for the program to complete

processing currently in execution, in accordance with the performance, load, processing amount of the computer". See col. 5, lines 10-19. *Saito* does not teach estimating a utilization rate. Nor does *Saito* appear to teach equalizing utilization rates. Accordingly, *Saito* does not teach at least the claim 1 limitation of "estimating a utilization rate for each of the service components based on said determined service demands, wherein said dynamically modifying includes adjusting said assigned initial priority rankings to substantially equalize said utilization rates of the service components." Because *Saito* does not teach all limitations of claim 1, claim 1 is not anticipated by the cited reference.

Claims 3-5 depend from claim 1. As such, they comprise all limitations of the base claim from which they depend. As shown above, *Saito* does not teach all limitations of claim 1. Accordingly, *Saito* does not teach all limitations of claims 3-5 and does not anticipate these claims. For the above reasons, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. § 102(b) and pass claims 1 and 3-5 to allowance.

Claims 6-8 have been indicated as allowable if rewritten in independent form including all limitations of the base claim. As shown above, claim 1 is not anticipated by *Saito*. Claims 6-8 depend from claim 1, comprise all limitations of base claim 1, and are thus not anticipated by *Saito*. Applicant respectfully asserts that claims 6-8 are allowable in their present form.

Claim Rejections under 35 U.S.C § 103(a)

Claims 9-13 and 15-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Saito* in view of *Parks*.

To establish a prima facie case of obviousness, three basic criteria must be met. See M.P.E.P. § 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Without conceding the first or second criteria,

Applicant respectfully asserts that the references do not teach or suggest all the claim limitations.

Claim 14 was indicated as allowable if rewritten in independent form with all limitations of any intervening claims. Applicant has amended claim 9 to include all limitations of claim 14 and intervening claim 13. Claims 13 and 14 have been cancelled without prejudice. Applicant respectfully asserts that amended claim 9 is allowable over the cited art.

Claims 10-12 and 15 depend from claim 9. As such, they comprise all limitations of the base claim from which they depend. Accordingly, Applicant respectfully asserts that claims 10-12 and 15 are also allowable as depending from an allowable claim.

Claim 16 has been amended to recite "code for estimating a utilization rate for each RAID storage level based on determined service demand." *Saito* does not teach or suggest at least these limitations. Instead, *Saito* teaches "means for predicting a processing time required for the program to complete processing currently in execution, in accordance with the performance, load, processing amount of the computer". See col. 5, lines 10-19. *Saito* does not teach or suggest estimating a utilization rate. *Parks* does not cure the deficiencies of *Saito* with respect to claim 16. Accordingly, *Saito* in view of *Parks* does not teach or suggest all limitations of claim 16. Thus, claim 16 is not obvious over the cited references.

Claims 17-20 depend directly or indirectly from claim 16. As such they comprise all limitations of the base claim from which they depend. As shown above, *Saito* in view of *Parks* does not teach or suggest all limitations of claim 16. Accordingly, *Saito* in view of *Parks* does not teach all limitations of claims 17-20.

For the above reasons, Applicant respectfully requests that the Examiner withdraw the claim rejections under 35 U.S.C. § 103(a) and pass claims 9-12 and 15-20 to allowance.

Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance.

Application No.: 09/757,269

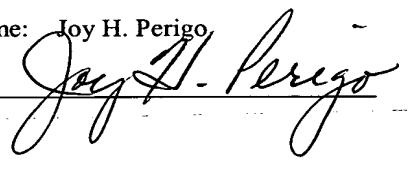
Docket No.: 10003127-1

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-2025, under Order No. 10003127-1 from which the undersigned is authorized to draw.

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Date of Deposit: 04-27-2005

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